

Marilyn Moon, Ph.D.
CHAIR



Rex W. Cowdry, M.D.
EXECUTIVE DIRECTOR

MARYLAND HEALTH CARE COMMISSION

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215
TELEPHONE: 410-764-3460 FAX: 410-358-1236

MARYLAND HEALTH CARE COMMISSION

Thursday, September 18, 2008
Minutes

Chair Moon called the meeting to order at 12:30 p.m.

Commissioners present: Conway, Jefferson, Krumm, Lucht, McLean, Moore, Olsen, Ontaneda-Bernales, Petty, Pollak, Todd, and Worthington. Commissioner Falcone was present via telephone.

ITEM 1.

Approval of the Minutes

Commissioner Todd noted that he was omitted from the list of Commissioners who participated in the August 5th public meeting conducted by teleconference and asked that the minutes be corrected. With that change, he made a motion to approve the minutes of the July 17, 2008 public meeting and the minutes of the August 5, 2008 public meeting conducted by teleconference, which was seconded by Commissioner Conway, and unanimously approved.

ITEM 2.

Update of Activities

Bruce Kozlowski, Director, Center for Health Care Financing and Policy, introduced a new staff member, Sule Calikoglu. Mr. Kozlowski said Dr. Calikoglu would be working as a Senior Health Policy Analyst, supporting both the Center for Health Care Financing and Policy, as well as the Center for Long Term Care and Community Based Services. Ms. Calikoglu holds a doctorate in Public Health (Health Policy and Management), a Masters in Public Policy, and a Masters in Political Science and Public Administration. She is also a registered nurse.

Mr. Kozlowski also noted that, given the long agenda, the 2008/2009 Health Plan Performance Report will be presented at the October meeting. He provided a copy of that report to the Commissioners and said the report will be posted on the Commission's website. Mr. Kozlowski said that the annual report on mandated benefits is due prior to this year's legislative session. He noted that this year's report is based on five proposed mandates. Mr. Kozlowski said the first meeting of the Home Health Advisory Group will be held on Thursday, September 25, 2008 at the Commission's offices.

David Sharp, Director, Center for Information Technology, announced the release of the *Privacy and Security Solutions and Implementation Activities Report*. The final report identified organizational-level business practices related to privacy and security policies for electronic health information and is available on the Commission's website. He also introduced a new staff member, Eunice Pak. Ms. Pak is a Health Policy Analyst who will work with Cindy Friend, Chief, Health IT Division. Previously, Ms. Pak was a Medicare Health Support Program Services Manager for Healthways. She also has experience working for a health care provider and has served in the Peace Corps in Southeast Asia. Ms. Pak holds a dual bachelors degree in Biological Sciences and in Bio-Psychology.

Pam Barclay, Director, Center for Hospital Services, also introduced a new staff member, Eileen Hederman. Ms. Barclay said that Ms. Hederman joined the staff of the Hospital Quality Initiatives program and will focus primarily on the Commission's efforts to collect and publicly report data on healthcare associated infections. She noted that staff has been working with the Maryland Hospital Association to ensure that all Maryland acute care hospitals are enrolled in the National Healthcare Safety Network system and noted that all Maryland hospitals are now enrolled in NHSN.

Ben Steffen, Director, Center for Data Systems and Analysis, said staff will be holding a meeting with payers to discuss expanding data collection as a result of HB 800 (2007). Mr. Steffen also noted that the Health Care Access and Reimbursement Task Force is developing recommendations for the Final Report. The report on study findings and recommendations of the Task Force will be sent to the Governor and General Assembly on or before December 1, 2008.

ITEM 3.

ACTION: Executive Director Recommendation on Non-Primary PCI Research Waiver Applications

Chair Moon said that, on September 20, 2007, the Commission adopted new regulations, which set up an application and review process by which hospitals without on-site cardiac surgery backup may be permitted by the Commission to participate in a research study that will assess the safety and effectiveness of non-primary Percutaneous Coronary Interventions (commonly called elective angioplasty). This study, known as C-PORT E, is a multi-state study, with Dr. Tom Aversano at Johns Hopkins Hospital serving as the principal investigator. It is anticipated that the results of the C-PORT E study will provide data that will help guide policy regarding angioplasty in Maryland and elsewhere.

The Commission's regulations provide that it may award non-primary PCI research waivers to a maximum of six hospitals statewide. Dr. Moon noted that the regulations set up a two-phase review of applications for research waivers from hospitals throughout the State and that today's meeting concerns phase one of the review, which involves research waiver applications from the Metropolitan Baltimore and Metropolitan Washington regional service areas. The second phase of the review will consider applications from the more rural Western Maryland and Eastern Shore regional service areas. Dr. Moon stated that the Commission received letters of intent from two hospitals in the Western Maryland region by the September 17, 2008 due date. Applications from those hospitals are due on October 14. The Commission will take action on the research waiver applications from the rural hospitals at a later meeting.

Seven hospitals in the metropolitan regional service areas submitted applications for research waivers. In the Metropolitan Baltimore region, those hospitals are: Anne Arundel Medical Center; Baltimore Washington Medical Center; Johns Hopkins Bayview Medical Center; and St. Agnes Hospital. In the

Metropolitan Washington region, the hospitals submitting applications are: Holy Cross Hospital; Shady Grove Adventist Hospital; and Southern Maryland Hospital Center.

On August 22, Dr. Cowdry sent the applicants his Recommended Decision. The hospitals were given an opportunity to file comments on the recommendations. Dr. Moon noted that the Commissioners previously received the Executive Director's Recommended Decision and the written comments filed by the applicant hospitals.

The Commission heard oral argument from: Jack Tranter, counsel to Baltimore Washington Medical Center; Patricia Brown, counsel to Johns Hopkins Bayview Medical Center; Martin L. Doordan (President/CEO) and Dr. Jonathan Altschuler for Anne Arundel Medical Center; Moussa Elbayoumy for Shady Grove Adventist Hospital; Richard McAlee, counsel for Southern Maryland Hospital Center; and Marta Harting, counsel, and Drs. Stephen Plantholt and Carlos Ince, for St. Agnes Hospital.

Dr. Rex Cowdry, the Commission's Executive Director, recommended that the Commission grant npPCI research waivers to Anne Arundel Medical Center, Shady Grove Adventist Hospital, Southern Maryland Hospital Center, and St. Agnes Hospital, and hold two waivers in abeyance pending the completion of the review of applications from Western Maryland. He also recommended that the Commission take no action on the applications of Baltimore Washington Medical Center, Johns Hopkins Bayview Medical Center, and Holy Cross Hospital. If the remaining two waivers available under the regulations are not awarded in the review of applications from Western Maryland, Commission staff will look again at the procedure volumes of Baltimore Washington Medical Center, Holy Cross Hospital, and Johns Hopkins Bayview Medical Center, and make additional recommendations so that all six research waivers are awarded.

Commissioner Todd made a motion that the Commission accept Dr. Cowdry's recommendation as modified; which was seconded by Commissioner Olsen. Following discussion, the motion was approved by all the Commissioners participating in this matter. Commissioners Ontaneda-Bernales, Krumm, and Pollak were recused from consideration of this matter. In response to a question from Jack Tranter, counsel to Baltimore Washington Medical Center, Assistant Attorney General Suellen Wideman, counsel to the Commission, clarified that the applications of Baltimore Washington Medical Center, Johns Hopkins Bayview Medical Center, and Holy Cross Hospital were not denied, and that the Commission has taken no action on these three applications.

ACTION: Non-Primary PCI Research Waivers are Awarded to Anne Arundel Medical Center, Shady Grove Adventist Hospital, Southern Maryland Hospital Center, and St. Agnes Hospital; Two Research Waivers are Held in Abeyance Pending Completion of the Review of Western Maryland Hospitals; and No Action is Taken on the Remaining Three Applications Pending the Western Maryland Review.

Commissioner Moore made a motion that, following the review of the two rural hospitals, if one or more do not meet the criteria for a research waiver, then Baltimore Washington Medical Center, Johns Hopkins Bayview Medical Center, and Holy Cross Hospital be considered under the same criteria as those granted waivers. The motion was seconded by Commissioner Conway, and approved by all the Commissioners participating in this matter. Chair Moon added that if the three metropolitan regional service area hospitals are considered for a research waiver, the Commission's staff will update the information provided by the hospitals for the Commission's consideration. Commissioners Ontaneda-Bernales, Krumm, and Pollak were recused from consideration of this matter.

ITEM 4.

ACTION: COMAR 10.24.10 – State Health Plan for Facilities and Services

- COMAR 10.24.10 – Acute Inpatient Services – Supplement 6 – Emergency Action on Regulations

Paul Parker, Chief, Hospital Services Planning & Policy and Certificate of Need, presented a proposal for adoption, on an emergency basis, of a supplemental amendment to the existing State Health Plan chapter, which will update the Commission's need projections for medical/surgical beds and pediatric beds. Commissioner Pollak made a motion that the Commission adopt the supplement on an emergency basis, which was seconded by Commissioner Moore. Following discussion, the motion was unanimously approved.

ACTION: COMAR 10.24.10 – Supplement 6 to the Acute Inpatient Services Chapter of the State Health Plan is hereby ADOPTED as Emergency Regulations.

- COMAR 10.24.10 – Acute Care Hospital Services – Proposed Permanent Regulations

Mr. Parker presented staff's proposal for the repeal of the Acute Inpatient Services chapter with a comprehensive replacement chapter to be called the Acute Care Hospital Services chapter as proposed permanent regulation. He summarized the changes made since release of the proposed State Health Plan chapter for informal public comment in May 2008. Commissioner Krumm made a motion that the Commission adopt the replacement chapter as proposed permanent regulations, which was seconded by Commissioner Lucht and unanimously approved.

ACTION: COMAR 10.24.10 – The Acute Inpatient Services Chapter of the State Health Plan is Repealed, to be Replaced by the Acute Care Hospital Services Chapter, which is hereby ADOPTED as Proposed Permanent Regulations.

Commissioner Ontaneda-Bernales left the Commission meeting after consideration of Item 4.

5. ACTION: Certificate of Need (CON)

- Franklin Square Hospital Center (Docket No. 08-03-2250)

Franklin Square Hospital Center applied for a Certificate of Need to change its child psychiatric unit to an adolescent psychiatric unit. Joel Riklin, Health Policy Analyst, said that staff recommended approval. Commissioner Jefferson made a motion to accept the staff recommendation, which was seconded by Commissioner Worthington and unanimously approved.

ACTION: Certificate of Need for Franklin Square Hospital Center is hereby APPROVED.

- Exceptions Hearing: Point Lookout Nursing Home

FutureCare Health and Management Corporation applied for a Certificate of Need to construct a new 124-bed comprehensive nursing home in St. Mary's County, to be known as Point Lookout Nursing Center. Commissioner Petty was appointed the reviewer in this matter, and recognized two interested parties, St. Mary's Nursing Center, Inc. and LP Lexington Park LLC (the licensee of Bayside Care Center).

Commissioner Petty issued his Proposed Decision on July 29, 2008, in which he recommended that the Commission approve the application. The interested parties filed joint exceptions to the Proposed Decision.

The Commission conducted an exceptions hearing prior to acting on the reviewer's recommended decision. The joint interested parties, St. Mary's Nursing Center and Bayside Care Center, through their counsel, Carolyn Jacobs, presented oral argument on their exceptions; followed by oral argument by Stephen Sfekas on behalf of the applicant, Point Lookout Nursing Center.

Commissioner Petty made a motion that the Commission adopt his recommended decision and grant a Certificate of Need for FutureCare Health and Management Corporation to construct a new 124-bed comprehensive nursing home in St. Mary's County, to be known as Point Lookout Nursing Center. The motion was seconded by Commissioner Krumm. Following discussion, the Certificate of Need was approved, with Commissioners Conway, Jefferson, Krumm, Lucht, McLean, Petty, Pollak, Todd, and Worthington voting in favor of approval and Commissioner Falcone against approval.

ACTION: The Recommended Decision is hereby ADOPTED and the Certificate of Need for Point Lookout Nursing Home is hereby APPROVED.

- Reconsideration: Decision in Montgomery County Home Health Agency Review

Chair Moon said that on June 19, 2008, the Commission heard oral argument on exceptions to the Recommended Decision of Commissioner Nevins Todd, who served as the reviewer in the Montgomery County Home Health Review. The Commission adopted the Recommended Decision and awarded Certificates of Need to four applicants: ARGOR Business Solutions, Inc., which does business as Comprehensive Home Health Care Agency; Celtic Healthcare, Inc.; Maryland Home Health; and MBL Associates, Inc.

On July 3, 2008, HomeCare Rehab filed a Request for Reconsideration. Reliance Home Health Care, an unsuccessful applicant, and Celtic Healthcare, one of the approved applicants, filed responses to HomeCare Rehab's reconsideration request.

The Commission heard oral argument regarding whether the Request for Reconsideration shows good cause. Dr. Moon noted that the regulation provides that a Reconsideration Request shows good cause if it:

- (1) Presents significant, relevant information which was not previously presented to the Commission and which, with reasonable diligence, could not have been presented before the Commission made its decision;

(2) Demonstrates that there have been significant changes in factors or circumstances relied upon by the Commission in reaching its decision; or

(3) Demonstrates that the Commission has materially failed to follow its adopted procedures in reaching its decision.

HomeCare Rehab, which filed the request for reconsideration, presented oral argument by Dr. John Baker regarding good cause. Elizabeth Hogue, counsel for Celtic Healthcare, also presented oral argument.

Commissioner Todd made a motion that the Commission find that good cause had not been shown for reconsideration of its decision, which was seconded by Commissioner Pollak, and unanimously approved. Dr. Moon noted that, having failed to show good cause for reconsideration, the request for reconsideration is denied. Commissioners Falcone and Krumm recused themselves from the June 19 hearing, and continued their recusal.

ACTION: Request for Reconsideration Filed by HomeCare Rehab is hereby DENIED.

ITEM 6.

ADJOURNMENT

There being no further business, the meeting was adjourned at 4:45 p.m., upon motion of Commissioner Todd, which was seconded by Commissioner McLean, and unanimously approved.